United States Department of Labor Employees' Compensation Appeals Board

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J.M., Appellant)
and) Docket No. 14-280
U.S. POSTAL SERVICE, FLEETWOOD STATION, Houston, TX, Employer) Issued: May 5, 2014))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before: RICHARD J. DASCHBACH, Chief Judge

ALEC J. KOROMILAS, Alternate Judge MICHAEL E. GROOM, Alternate Judge

On November 20, 2013 appellant filed a timely appeal from the August 16, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied waiver of recovery of an overpayment of compensation.¹

On July 16, 2013 OWCP issued a preliminary determination that appellant had received a \$2,889.92 overpayment of compensation from April 4, 2012 to June 29, 2013 arising from incorrect premiums collected for health insurance, but that she was due a refund of \$1,557.40 from the cancellation of her life insurance coverage, for an overpayment balance of \$1,332.52.

On July 18, 2013 appellant requested waiver. She elected a telephone conference with OWCP on the issue: "cannot afford extra expenses caused by no fault of my own. Please waive." OWCP received this request on July 25, 2013.

¹ On January 24, 2012 appellant, a 52-year-old carrier technician, filed an occupational disease claim alleging that the repetitive nature of her duties caused bilateral carpal tunnel syndrome and upper extremity symptoms. OWCP accepted her claim for bilateral carpal tunnel syndrome.

² It is well established that OWCP should not attempt to offset underpayments of compensation in determining the amount of an overpayment, as they are separate issues. *Robert L. Curry*, 54 ECAB 675 (2003). If a claimant pursues waiver and the adjusted overpayment is waived, the claimant will have lost due process rights with respect to recovery of the offset amount.

On August 16, 2013 appellant telephoned OWCP (or OWCP called her back) to advise that she could not pay anything on the overpayment because she was not back at work.

The Board finds that this case is not in posture for decision. Extensive due process rights attach to any attempt by OWCP to recoup benefits already paid, even if paid in error.³ After giving appellant notice that an overpayment occurred and that she was not at fault in the matter, making her eligible for waiver, appellant requested waiver and exercised her right to a telephone conference with OWCP in lieu of a hearing before an OWCP hearing representative. That conference, it appears, never took place. The record shows no scheduling or preparation and no memorandum of conference. The one-sentence report of telephone contact on August 16, 2013 cannot be confused with a procedural formal telephone conference, in lieu of a hearing before an OWCP hearing representative, on the issue of waiver.⁴ Accordingly, the Board finds that OWCP issued a final decision denying waiver of recovery of the overpayment without providing appellant due process.

The Board will remand the case to OWCP to correct this error. Following such development as may be necessary to facilitate the outstanding request for a formal telephone conference, including a current overpayment recovery questionnaire and supporting financial documentation, OWCP shall issue an appropriate final decision on appellant's request for waiver.⁵

³ See generally FECA Circular No. 82-48, Overpayments and Waiver (December 1, 1982); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, Overpayment Overview, Chapter 6.100.3k (May 2004).

⁴ See generally Federal (FECA) Procedure Manual, Part 2 -- Claims, Conferences, Chapter 2.500 (September 2011).

⁵ See Jimmie R. Fornero, Docket No. 99-875 (issued January 16, 2001) (remanding the case to OWCP to consider the claimant's request for a telephone conference, as he was not provided the opportunity to present testimonial evidence regarding his request for waiver).

IT IS HEREBY ORDERED THAT the August 16, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order.⁶

Issued: May 5, 2014 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

> Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board

> Michael E. Groom, Alternate Judge Employees' Compensation Appeals Board

⁶ OWCP's October 30, 2013 nonmerit decision denying a 5 U.S.C. § 8124(b) hearing following a final overpayment decision is rendered moot.